

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Thomas C. Holman
Bankruptcy Judge
Sacramento, California

January 21, 2014 at 9:32 A.M.

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1. [13-29800](#)-B-13 JOSE ARANDA AND FAVIOLA MOTION TO CONFIRM PLAN
CAH-7 VALENCIA-ARANDA 11-26-13 [[98](#)]

Tentative Ruling: The chapter 13 trustee's objections are overruled. The motion is granted, and the amended plan filed November 26, 2013, is confirmed with the following modification included in the order confirming the plan: Class 2 treatment for creditor Franchise Tax Board is stricken from the plan.

The chapter 13 trustee's objection regarding the debtors' failure to submit a Class 1 Checklist and an Authorization to Release Information to Trustee regarding Secured Claims Being Paid by the Trustee is overruled because the debtors have submitted the requested documents to the trustee since the filing of the trustee's objection.

The court will issue a minute order granting the motion to confirm. Counsel for the debtors shall submit an order confirming the plan using EDC form 3-081-12 (Rev. 5/1/12) that conforms to the court's ruling and which has been approved by the trustee. The title of the order shall include a specific reference to the filing date of the amended plan.

2. [13-29800](#)-B-13 JOSE ARANDA AND FAVIOLA COUNTER MOTION TO DISMISS CASE
CAH-7 VALENCIA-ARANDA 12-26-13 [[107](#)]

Tentative Ruling: The trustee's countermotion is filed under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Subject to such opposition, the court issues the following abbreviated tentative ruling.

The countermotion is denied.

The court will issue a minute order.

3. [11-41303](#)-B-13 DALVIR BRAR MOTION TO MODIFY PLAN
JT-1 11-26-13 [[37](#)]

Tentative Ruling: The chapter 13 trustee's opposition is overruled. The motion is granted, and the modified plan filed November 14, 2013, is confirmed with the following modification: The dividend to be paid to

general unsecured creditors pursuant to Section 2.15 of the plan shall be no less than 0.85%.

The motion is granted and the modified plan is confirmed in the absence of any objection under 11 U.S.C. § 1325(b)(1)(B) by the trustee or the holder of an allowed unsecured claim. The court notes, however, that the modified plan reduces the total amount to be paid to general unsecured creditors to an amount less than that required by 11 U.S.C. § 1325(b)(1)(B) by reducing the commitment period of the plan to less than 36 months, in violation of 11 U.S.C. § 1325(b)(4)(A)(i). The court may not raise a section 1325(b) objection sua sponte. Andrews v. Loheit (In re Andrews), 155 B.R. 769, 771-772 (9th Cir. BAP 1993), aff'd. 49 F.3d 1404 (9th Cir. 1995). The court expresses no opinion whether the modified plan would be confirmed in the presence of an objection by the trustee or the holder of an allowed unsecured claim.

The court will issue a minute order.

4. [13-24704](#)-B-13 TIMOTHY/KERRI FULTON AMENDED MOTION TO CONFIRM PLAN
SJJ-11 12-10-13 [[154](#)]

Tentative Ruling: The chapter 13 trustee's opposition is overruled. The motion is granted and the amended plan filed November 26, 2013, is confirmed with the following modification to the plan's payment provisions: The debtors shall pay to the trustee \$290.00 for 1 month, followed by \$300.00 per month for 3 months, followed by \$360.00 per month for 32 months. The plan term shall be 36 months

The court will issue a minute order granting the motion to confirm. Counsel for the debtors shall submit an order confirming the plan using EDC form 3-081-12 (Rev. 5/1/12) that conforms to the court's ruling and which has been approved by the trustee. The title of the order shall include a specific reference to the filing date of the amended plan. .

5. [13-24704](#)-B-13 TIMOTHY/KERRI FULTON COUNTER MOTION TO DISMISS CASE
SJJ-11 1-7-14 [[156](#)]

Tentative Ruling: The trustee's countermotion is filed under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Subject to such opposition, the court issues the following abbreviated tentative ruling.

The countermotion is denied.

The court will issue a minute order.

6. [09-33211](#)-B-13 PATRICIA MCCARTHY MOTION TO MODIFY PLAN
JVP-3 12-18-13 [[62](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted, and the modified plan filed December 18, 2013, is confirmed.

The court will issue a minute order.

7. [11-31711](#)-B-13 DAVID/LEISKE ARNETT MOTION TO MODIFY PLAN
CAH-2 12-7-13 [[38](#)]

Tentative Ruling: The chapter 13 trustee's opposition is overruled. The motion is granted, and the modified plan filed December 7, 2013, is confirmed with the following modification: The payment provisions in section 6 of the plan shall state that the debtor has paid a total of \$18,900.00 to the chapter 13 trustee for months 1-30 of the plan, and thereafter the debtor shall pay the chapter 13 trustee \$473.00 per month for months 30-60.

The court will issue a minute order.

8. [11-43113](#)-B-13 DANIEL/MARGARET FRANCO CONTINUED MOTION TO INCUR DEBT
PGM-5 11-13-13 [[82](#)]

Tentative Ruling: This motion continued from January 7, 2014, to allow the debtors to file supplemental evidence supporting the justiciability of this matter. The debtors filed supplemental evidence on January 8, 2014. The court now issues the following tentative ruling.

The motion is dismissed without prejudice.

Upon review of the debtor's supplemental evidence, the court is not persuaded that this motion for authorization to incur debt for the purpose of purchasing real property is ripe for adjudication. The debtors have not shown that if this motion is granted that an actual financing and sale transaction will take place, as they have shown no evidence that the debtors will actually be able to obtain the financing that they propose in the motion. The Mortgage Credit Approval Letter (the "Credit Letter") filed by the debtors as supplemental evidence does not constitute such evidence, as 1.) it is not a final loan approval, as stated on the Credit Letter itself, and 2.) the terms of the borrowing described on the Credit Letter differ from the terms presented in the motion with respect to material terms, including the principal amount to be borrowed and the interest rate.

The absence of an actual transaction for the court to approve means that the court lacks jurisdiction over the matter because the motion lacks justiciability. The justiciability doctrine concerns "whether the plaintiff has made out a 'case or controversy' between himself and the defendant within the meaning of Art. III." Warth v. Seldin, 422 U.S. 490, 498, 95 S.Ct. 2197, 45 L.Ed.2d 343 (1975). Under Article III of the United States Constitution, federal courts only hold jurisdiction to decide cases and controversies. With no finalized, actual agreement for the financing of the property, no case or controversy within the meaning

of Article III exists.

The court will issue a minute order.

9. [13-28914](#)-B-13 TAMARA PINNICK
MMM-1

OBJECTION TO CLAIM OF
PROFESSIONAL COLL CONSULTANTS,
CLAIM NUMBER 7
11-21-13 [[16](#)]

Disposition Without Oral Argument: This objection is unopposed. The court issues the following abbreviated ruling.

The debtor's objection is sustained. Claim no. 7 on the court's claims register, filed on July 18, 2013 (the "Claim"), by Professional Coll Consultants (the "Claimant") is disallowed, except to the extent already paid by the trustee pursuant to the terms of the confirmed plan.

The debtor questions the validity and nature of the Claim. A properly completed and filed proof of claim is prima facie evidence of the validity and amount of a claim. Fed. R. Bankr. P. 3001(f). However, when an objection is made and that objection is supported by evidence sufficient to rebut the prima facie evidence of the proof of claim, then the burden is on the creditor to prove the claim.

Here, the debtor provides evidence that the Claim is time-barred under California law. Pursuant to the California Code of Civil Procedure Section 337, the statute of limitations on an action to recover upon a book account is four years. Here, the proof of claim form and the statement summary attached to the Claim indicates that the claim is based on expenses incurred with respect to a credit card account. Such an account constitutes a book account as defined in Cal. Civ. Proc. Code § 337a. Pursuant to Cal. Civ. Proc. Code § 344, in an action brought to recover a balance due upon a mutual, open, and current account, where there have been reciprocal demands between the parties, the cause of action is deemed to have accrued from the time of the last item proved in the account on either side. As debtor's objection points out, the Claim indicates the obligation accrued on September 10, 2007. Therefore, the debtor has provided sufficient evidence that the Claimant's cause of action on its Claim began to accrue on September 10, 2007, nearly six years before debtor filed her chapter 13 petition on July 2, 2013. By failing to respond to the objection, the creditor has failed to carry its burden of proving up the Claim. Accordingly, the objection is sustained and the Claim is disallowed, except to the extent already paid by the trustee.

The court will issue a minute order.

10. [13-28914](#)-B-13 TAMARA PINNICK
MMM-2

OBJECTION TO CLAIM OF ASSET
ACCEPTANCE, LLC, CLAIM NUMBER 8
11-21-13 [[21](#)]

Disposition Without Oral Argument: This objection is unopposed. The court issues the following abbreviated ruling.

The debtor's objection is sustained. Claim no. 8 on the court's claims register, filed on July 22, 2013 (the "Claim"), by Asset Acceptance, LLC (the "Claimant") is disallowed, except to the extent already paid by the trustee pursuant to the terms of the confirmed plan.

The debtor questions the validity and nature of the Claim. A properly completed and filed proof of claim is prima facie evidence of the validity and amount of a claim. Fed. R. Bankr. P. 3001(f). However, when an objection is made and that objection is supported by evidence sufficient to rebut the prima facie evidence of the proof of claim, then the burden is on the creditor to prove the claim.

Here, the debtor provides evidence that the Claim is time-barred under California law. Pursuant to the California Code of Civil Procedure Section 337, the statute of limitations on an action to recover upon a book account is four years. Here, the proof of claim form and the statement summary attached to the Claim indicates that the claim is based on expenses incurred with respect to a credit card account. Such an account constitutes a book account as defined in Cal. Civ. Proc. Code § 337a. Pursuant to Cal. Civ. Proc. Code § 344, in an action brought to recover a balance due upon a mutual, open, and current account, where there have been reciprocal demands between the parties, the cause of action is deemed to have accrued from the time of the last item proved in the account on either side. As debtor's objection points out, the Claim indicates the obligation accrued on September 27, 2007. Therefore, the debtor has provided sufficient evidence that the Claimant's cause of action on its Claim began to accrue on September 10, 2007, nearly six years before debtor filed her chapter 13 petition on July 2, 2013. By failing to respond to the objection, the creditor has failed to carry its burden of proving up the Claim. Accordingly, the objection is sustained and the Claim is disallowed, except to the extent already paid by the trustee.

The court will issue a minute order.

11. [10-25319](#)-B-13 TIMOTHY/WENDY JOHNSON
EJS-6

MOTION TO MODIFY PLAN
12-6-13 [[83](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted, and the modified plan filed December 6, 2013, is confirmed.

The court will issue a minute order.

12. [13-31019](#)-B-13 DEBRA FREEMAN MOTION TO VACATE
JPJ-1 1-6-14 [[28](#)]

Disposition Without Oral Argument: Oral argument will not aid the court in rendering a decision on this matter.

The motion is removed from the calendar. The chapter 13 trustee withdrew the motion on January 10, 2014 (Dkt. 32).

13. [13-34920](#)-B-13 VICTORIA BARNEY OBJECTION TO CONFIRMATION OF
SAC-1 PLAN BY RICHARD BARNEY AND/OR
MOTION TO CONVERT CASE FROM
CHAPTER 13 TO CHAPTER 7
12-26-13 [[15](#)]

Tentative Ruling: The creditor's objections and motion are governed by the procedures of LBR 9014-1(f)(2). Opposition may be presented at the hearing. The court issues not tentative ruling on the merits of the objection or the motion.

14. [10-34923](#)-B-13 DONALD/EMMA SHAW MOTION TO DISMISS OR TO CONVERT
IRS-1 CASE TO CHAPTER 7
12-16-13 [[61](#)]

Tentative Ruling: The debtors' opposition is overruled. Pursuant to 11 U.S.C. §§ 1307(c)(1) and (c)(6), the case is dismissed.

The debtors' chapter 13 plan (Dkt. 27), confirmed by order entered November 8, 2010 (Dkt. 37), provides in section 6.02(c) that the "[d]ebtor's financial and business affairs shall be conducted in accordance with applicable non-bankruptcy law including the timely filing of tax returns and payment of taxes." The movant, creditor Internal Revenue Service of the United States (the "Service") alleges without dispute that the debtors have failed to both timely and fully satisfy their income tax liabilities for the tax years 2010 through 2012. The foregoing facts constitute a material default by the debtors with respect to a term of a confirmed plan and cause to convert or dismiss the chapter 13 case pursuant to 11 U.S.C. § 1307(c)(6). Additionally, the Service has established cause to convert or dismiss the chapter 13 case pursuant to 11 U.S.C. § 1307(c)(1) for unreasonable delay by the debtors that is prejudicial to creditors. In this instance, the court dismisses the case, as its review of the debtors' schedules shows that the debtors do

not have significant non-exempt assets that could be administered by a trustee if the case were converted to chapter 7.

The debtors' opposition is not persuasive. Their desire to make direct payments to the Service does not change the fact that they are in material default of their confirmed plan.

The court will issue a minute order.

15. [13-22923](#)-B-13 RUDY HEURTELOU AND WENDY MOTION TO CONFIRM PLAN
PGM-9 LAU 12-3-13 [[155](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted and the amended plan filed December 3, 2013, will be confirmed.

The court will issue a minute order granting the motion to confirm. Counsel for the debtors shall submit an order confirming the plan using EDC form 3-081-12 (Rev. 5/1/12) that conforms to the court's ruling and which has been approved by the trustee. The title of the order shall include a specific reference to the filing date of the amended plan.

16. [10-42927](#)-B-13 GREGORY/BERTHA MAIER MOTION TO VALUE COLLATERAL OF
JT-3 JPMORGAN CHASE BANK, N.A.
12-11-13 [[40](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$0.00 of JPMorgan Chase Bank, N.A.'s ("Chase") claim in this case secured by the second deed of trust on real property located at 233 Begonia Boulevard, Fairfield, California ("Property") is a secured claim, and the balance of its claim is an unsecured claim.

In the absence of opposition, for the purposes of this motion, the Property had a value of \$175,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by U.S. Bank, N.A. with a balance of approximately \$348,000.00. Thus, the value of the collateral available to Chase on its second deed of trust is \$0.00.

The court will issue a minute order.

17. [11-31127](#)-B-13 SANDRA VENTIMIGLIA
DBJ-2

MOTION TO MODIFY PLAN
11-26-13 [[38](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted, and the modified plan filed November 26, 2013, is confirmed.

The court will issue a minute order.

18. [13-34227](#)-B-13 MARVIN/EMMA BRIDGES
TJW-1

MOTION TO VALUE COLLATERAL OF
TRAVIS CREDIT UNION
12-13-13 [[15](#)]

Tentative Ruling: The debtor's motion to value the collateral of Travis Credit Union is continued to a final evidentiary hearing on February 26, 2014, at 2:00 p.m. before the Honorable David E. Russell in courtroom 32. On or before February 19, 2014, each party shall lodge (not file) with the Courtroom Deputy, Ms. Sheryl Arnold, two identical, tabbed binders (or set of binders), each containing (i) a witness list (which includes a general summary of the testimony of each designated witness), (ii) one set of the party's exhibits, separated by numbered or lettered tabs and (iii) a separate index showing the number or letter assigned to each exhibit and a brief description of the corresponding document. The debtor's binder tabs shall be consecutively numbered, commencing at number 1. The respondent's binder tabs shall be consecutively lettered, commencing at letter A. On or before February 19, 2014, each party shall serve on the other party an identical copy of the party's lodged binder (or set of binders) by overnight delivery. The parties shall lodge and serve these binder(s) regardless of whether some or all of the contents have been filed in the past with this court. The lodged binder(s) shall be designated as Exhibits for Hearing on Debtor's Motion to Value the Collateral of Travis Credit Union. In addition to the tabs, the hearing exhibits in the lodged binder(s) shall be pre-marked on each document. Stickers for pre-marking may be obtained from Tabbies, [www.tabbies.com] - debtors' stock number 58093 and creditors' stock number 58094. All lodged binder(s) shall be accompanied by a cover letter addressed to the Courtroom Deputy stating that the binder(s) are lodged for chambers pursuant to Judge Holman's order. Each party shall bring to the hearing one additional and identical copy of the party's lodged binder(s) for use by the court - to remain at the witness stand during the receipt of testimony.

Nothing in this ruling shall be construed as a finding that if the debtors are prevail in the evidentiary hearing they will be able to confirm a plan that pays \$0.00 to the creditor's allowed secured claim during the term of the plan and which provides that the debtors will be entitled to a reconveyance of the deed of trust upon completion of the plan. This department agrees with those authorities which hold that a successful "lien strip" of a wholly unsecured junior deed of trust

requires both completion of the chapter 13 plan and receipt of a discharge, and that a creditor with an allowed secured claim in a chapter 13 case must retain its lien until the earlier of payment of the underlying debt determined under applicable non-bankruptcy law or discharge under 11 U.S.C. § 1328. 11 U.S.C. § 1325(a)(5)(B)(i). The court also recognizes, however, that a secured creditor's failure to object to a plan constitutes acceptance of the plan. See 11 U.S.C. § 1325(a)(5)(A) and Andrews v. Loheit (In re Andrews), 49 F.3d 1404, 1409 (9th Cir. 1995). Based on the foregoing, the court concludes that, for the purposes of the resolution of this motion, the fact that the debtors are not eligible for a discharge does not prevent them from utilizing 11 U.S.C. § 506(a) to value collateral, though it may affect their ability to utilize the resulting valuation for the purposes of a chapter 13 plan.

The court will issue a minute order.

19. [12-22230](#)-B-13 JAMES/REBECCA ROTH MOTION TO MODIFY PLAN
BLG-3 11-8-13 [[48](#)]

Tentative Ruling: The motion is granted, and the modified plan filed November 8, 2013, is confirmed.

The court will issue a minute order.

20. [13-22830](#)-B-13 MARIO THOMPSON AND OBJECTION TO CLAIM OF TERESA
DBJ-1 MICHELLE HAMMACK-BURNS THOMPSON, CLAIM NUMBER 5
11-8-13 [[26](#)]

Disposition Without Oral Argument: This objection is unopposed. The court issues the following abbreviated ruling.

The objection is sustained. Claim no. 5 on the court's claims register, filed by Teresa Thompson in the amount of \$32,000.00, (the "Claim") is disallowed as a secured claim and allowed as a general unsecured claim, except to the extent already paid to the claimant by the trustee in excess of the dividend to general unsecured creditors.

A proof of claim executed and filed in accordance with the Federal Rules of Bankruptcy Procedure ("FRBP") constitutes prima facie evidence of the validity and amount of a claim. FRBP 3001(f). However, when an objection is made and that objection is supported by evidence sufficient to rebut the prima facie evidence of the proof of claim, then the burden is on the creditor to prove the claim. Litton Loan Servicing, LP v. Garvida (In re Garvida), 347 B.R. 697 (9th Cir. BAP 2006). In many cases, however, simply presenting evidence in an objection that the Claim is not prima facie valid is insufficient to invalidate the Claim. See Heath v. American Express Travel Related Services Co., et al. (In re Heath), 331 B.R. 424, 434-35 (9th Cir. BAP 2005).

In this case, the Claim is not entitled to prima facie validity. The Claim was filed as a secured claim, but was not filed with any supporting evidence showing that the debtor granted the claimant a security interest or with evidence of perfection of a security interest in property of the

estate. The Claim does not comply with Fed. R. Bankr. P. 3001(c)(1) or (d).

As set forth in the debtor's supporting declaration, the debt owed to the claimant is not a debt secured by property of the estate, but represents an equalization payment owed by the debtor to the claimant evidenced by an unsecured promissory note. By failing to appear in opposition to the objection, the claimant has not sustained her burden of presenting evidence to prove up the secured status of the claim. Accordingly, the claim is disallowed as a secured claim and allowed as a general unsecured claim.

The court will issue a minute order.

21. [13-35130](#)-B-13 JOSE TOLEDO
TOG-1

MOTION TO VALUE COLLATERAL OF
ALLIED SERVICING CORPORATION
12-18-13 [[16](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$0.00 of Allied Servicing Corporation's ("Allied") claim in this case secured by the second deed of trust on real property located at 671 Granger Avenue, Sacramento, California ("Property") is a secured claim, and the balance of its claim is an unsecured claim.

In the absence of opposition, for the purposes of this motion, the Property had a value of \$64,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Chase Mortgage with a balance of approximately \$68,000.00. Thus, the value of the collateral available to Allied on its second deed of trust is \$0.00.

The court will issue a minute order.

22. [12-38432](#)-B-13 JOHN/NATALIE PICOTTE
DMB-10

MOTION TO CONFIRM PLAN
12-6-13 [[186](#)]

Tentative Ruling: The chapter 13 trustee's opposition is sustained. The motion to confirm the amended plan filed December 6, 2013, is denied.

The court will issue a minute order.

23. [12-38432](#)-B-13 JOHN/NATALIE PICOTTE
DMB-10

COUNTER MOTION TO DISMISS CASE
12-30-13 [[193](#)]

Tentative Ruling: The trustee's countermotion is filed under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Subject to such opposition, the court issues the following abbreviated tentative ruling.

The countermotion is conditionally denied, the conditions being that on or before February 4, 2014, the debtors file a new plan and a motion to confirm the new plan and all necessary related motions, including without limitation motions to value collateral and motions to avoid liens, properly serve the new plan and the motion(s), and set the motion(s) for hearing on the next available chapter 13 calendar that provides proper notice for all of the motions to be heard on the same calendar.

The court will issue a minute order.

24. [13-35332](#)-B-13 JAMES/IOLANI NEARY
CRG-1

MOTION TO VALUE COLLATERAL OF
TRAVIS FEDERALLY INSURED STATE
CHARTERED UNION
12-20-13 [[16](#)]

Tentative Ruling: The debtors' motion to value the collateral of Travis Credit Union is continued to a final evidentiary hearing on February 27, 2014, at 2:00 p.m. before the Honorable David E. Russell in courtroom 32. On or before February 20, 2014, each party shall lodge (not file) with the Courtroom Deputy, Ms. Sheryl Arnold, two identical, tabbed binders (or set of binders), each containing (i) a witness list (which includes a general summary of the testimony of each designated witness), (ii) one set of the party's exhibits, separated by numbered or lettered tabs and (iii) a separate index showing the number or letter assigned to each exhibit and a brief description of the corresponding document. The debtor's binder tabs shall be consecutively numbered, commencing at number 1. The respondent's binder tabs shall be consecutively lettered, commencing at letter A. On or before February 19, 2014, each party shall serve on the other party an identical copy of the party's lodged binder (or set of binders) by overnight delivery. The parties shall lodge and serve these binder(s) regardless of whether some or all of the contents have been filed in the past with this court. The lodged binder(s) shall be designated as Exhibits for Hearing on Debtor's Motion to Value the Collateral of Travis Credit Union. In addition to the tabs, the hearing exhibits in the lodged binder(s) shall be pre-marked on each document. Stickers for pre-marking may be obtained from Tabbies, [www.tabbies.com] - debtors' stock number 58093 and creditors' stock number 58094. All lodged binder(s) shall be accompanied by a cover letter addressed to the Courtroom Deputy stating that the binder(s) are lodged for chambers pursuant to Judge Holman's order. Each party shall bring to the hearing one additional and identical copy of the party's lodged binder(s) for use by the court - to remain at the witness stand during the receipt of testimony.

The court will issue a minute order.

25. [13-33334](#)-B-13 STEVEN/SUSANN MCCULLOUGH CONTINUED OBJECTION TO
PPR-1 CONFIRMATION OF PLAN BY BANK OF
AMERICA, N.A.
11-21-13 [[17](#)]

Tentative Ruling: This matter continued from January 7, 2014, to allow the court to review claim number 12 on the court's claims register, filed by the objecting creditor on January 7, 2014. The creditor's objections are governed by the procedures of LBR 9014-1(f)(2). Opposition may be presented at the hearing. Subject to such opposition, the court issues the following abbreviated tentative ruling.

The creditor's objections are sustained. Confirmation of the initial plan filed October 15, 2013, is denied.

The creditor's objection is sustained for the reasons set forth therein. The plan does not propose an arrearage dividend that is sufficient to cure the full amount of the pre-petition arrears owed to the creditor as of the date of filing the petition.

The court will issue a minute order.

26. [13-30339](#)-B-13 MICHAEL/JOYCE BONANNO MOTION TO CONFIRM PLAN
CAH-4 11-18-13 [[101](#)]

Disposition Without Oral Argument: Oral argument will not aid the court in rendering a decision on this matter.

The motion is removed from the calendar. The debtors withdrew the motion on January 13, 2014 (Dkt. 118).

27. [13-30339](#)-B-13 MICHAEL/JOYCE BONANNO COUNTER MOTION TO DISMISS CASE
CAH-4 1-6-14 [[112](#)]

Tentative Ruling: The trustee's countermotion is filed under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Subject to such opposition, the court issues the following abbreviated tentative ruling.

The countermotion is conditionally denied, the conditions being that on or before February 4, 2014, the debtors file a new plan and a motion to confirm the new plan and all necessary related motions, including without limitation motions to value collateral and motions to avoid liens, properly serve the new plan and the motion(s), and set the motion(s) for hearing on the next available chapter 13 calendar that provides proper notice for all of the motions to be heard on the same calendar.

The court will issue a minute order.

28. [13-28041](#)-B-13 CHRISTOPHER/GAIL BROWN MOTION TO CONFIRM PLAN
SAG-3 9-10-13 [[52](#)]

Disposition Without Oral Argument: Oral argument will not aid the court in rendering a decision on this matter.

The motion is removed from the calendar. By order entered November 25, 2013 (Dkt. 77), the court dismissed the motion without prejudice, in accordance with its disposition without oral argument issued on November 29, 2013 (Dkt. 71). This motion appears on this calendar because the debtors filed an amended notice of hearing on November 21, 2013 (Dkt. 75). However, filing of an amended notice of hearing purporting to set the motion on this calendar is not effective to vacate the court's order which has dismissed the motion. The debtors must file and set for hearing a new motion to confirm the amended plan.

29. [10-48745](#)-B-13 WARREN/KELLEY JOHNSON MOTION TO MODIFY PLAN
SDB-5 12-3-13 [[71](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted, and the modified plan filed December 3, 2013, is confirmed.

The court will issue a minute order.

30. [13-33651](#)-B-13 DALE GERGER MOTION TO CONFIRM PLAN
CAH-2 12-10-13 [[24](#)]

Tentative Ruling: The motion is denied.

Although no party in interest has opposed the motion, the court has an independent duty to ensure that the plan satisfies the requirements of the Bankruptcy Code for confirmation. In this case, the debtor has not signed the plan (Dkt. 20 at 6), indicating his intention to be bound by its terms.

The court will issue a minute order.

31. [13-36051](#)-B-13 KEVIN MEADOWS
PLG-1

MOTION TO EXTEND AUTOMATIC STAY
12-27-13 [[8](#)]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

32. [12-22553](#)-B-13 JASON/SHANON ROBLE
BLG-2

MOTION TO MODIFY PLAN
12-17-13 [[28](#)]

Tentative Ruling: The motion is denied.

Although no party in interest has objected to the motion, the court has an independent duty to ensure that the modified plan satisfies the requirements of the Bankruptcy Code for confirmation. In this case, the debtors have not sustained their burden of showing that the modified plan is feasible, as required by 11 U.S.C. § 1325(a)(6). The debtors are proposing to increase their monthly plan payment by more than \$200.00, based on an increase in their monthly mortgage payment for the loan secured by the first deed of trust in their residence. The debtors have not, however, filed evidence which shows they will be able to make the increased payment. They have not filed amended Schedules I and J, nor have they filed any other evidence of their monthly income and expenses which shows they will be able to make the increased payment.

The court will issue a minute order.

33. [13-31657](#)-B-13 MARLENE/DANIEL CARSON
PGM-2

MOTION TO AVOID LIEN OF GREATER
CALIFORNIA FINANCIAL SERVICES,
INC.
12-17-13 [[38](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A), subject to the provisions of 11 U.S.C. § 349. The judicial lien in favor of California Financial Services, Inc., recorded in the official records of Sacramento County, Book No. 20120404, is avoided as against the real property located at 4601 Sprucewood Court, Sacramento, CA 95823-1219 (the "Property").

The Property had a value of \$125,000.00 as of the date of the petition. The unavoidable liens total approximately \$232,034.79. The debtors claimed the Property as exempt under California Code of Civil Procedure Section 703.140(b)(1), under which they exempted \$24,060.00. The

respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the Property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtors' exemption of the Property and its fixing is avoided.

The court will issue a minute order.

34. [13-34857](#)-B-13 SYLVIA ALKILANY
JPJ-1

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
12-24-13 [[21](#)]

Tentative Ruling: The trustee's objections and motion to dismiss are governed by the procedures of LBR 9014-1(f)(2). Opposition may be presented at the hearing. Subject to such opposition, the court issues the following abbreviated tentative ruling.

The trustee's objections are sustained. Confirmation of the plan filed November 21, 2013 (Dkt. 5) is denied. The trustee's motion to dismiss is conditionally denied, the conditions being that on or before February 4, 2014, the debtor files a new plan, a motion to confirm the new plan and all necessary related motions, including without limitation motions to value collateral and motions to avoid liens, properly serves the new plan and the motion(s), and sets the motion(s) for hearing on the next available chapter 13 calendar that provides proper notice for all of the motions to be heard on the same calendar.

The court will issue a minute order.

35. [13-34857](#)-B-13 SYLVIA ALKILANY
MJ-1

OBJECTION TO CONFIRMATION OF
PLAN BY JPMORGAN CHASE BANK,
NATIONAL ASSOCIATION
12-24-13 [[17](#)]

Tentative Ruling: Creditor JPMorgan Chase Bank, N.A. ("Chase")'s objections are governed by the procedures of LBR 9014-1(f)(2). Opposition may be presented at the hearing. Subject to such opposition, the court issues the following abbreviated tentative ruling.

Chase's objections are sustained. Chase's request for an award of attorney's fees and costs is denied. Confirmation of the plan filed November 21, 2013 (Dkt. 5) is denied.

Chase's objections are sustained for the reasons set forth therein. Its request for an award of attorney's fees and costs is denied because it has not cited to any authority or provided any evidence in support of such a request. LBR 9014-1(d)(5), (6).

The court will issue a minute order.

36. [13-34857](#)-B-13 SYLVIA ALKILANY SW-1 OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO BANK, N.A. 1-8-14 [[30](#)]

Tentative Ruling: Creditor Wells Fargo Bank, N.A. ("WFB")'s objections are governed by the procedures of LBR 9014-1(f)(2). Opposition may be presented at the hearing. Subject to such opposition, the court issues the following abbreviated tentative ruling.

The objection is overruled.

The objection was not timely filed. The Notice of Chapter 13 Bankruptcy Case, Meeting of Creditors, & Deadlines entered on November 27, 2013, (Dkt. 9) required objections to confirmation of the initial plan to be filed and served by December 26, 2013. This objection was filed and served on January 8, 2014.

The court notes that the debtor has filed a standalone motion to value collateral of WFB, setting the matter for hearing on February 4, 2014 (Dkt. 24). WFB must file an opposition to that motion which conforms to the requirements of Local Bankruptcy Rule 9014-1(f). Asking the court to deny the debtor's valuation motion in WFB's objection to confirmation of the chapter 13 plan is ineffective as opposition to the valuation motion.

The court will issue a minute order.

37. [11-46160](#)-B-13 LITO/EUTIQUEIA CABUGOS JLK-5 MOTION TO MODIFY PLAN 11-25-13 [[67](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted, and the modified plan filed November 25, 2013 (Dkt. 67, p.4) is confirmed.

The court will issue a minute order.

38. [13-34760](#)-B-13 BRANDO/MYLENE CAYABYAB CAH-2 MOTION TO APPROVE LOAN MODIFICATION 12-17-13 [[23](#)]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

39. [13-34760](#)-B-13 BRANDO/MYLENE CAYABYAB MOTION TO VALUE COLLATERAL OF
CAH-3 AMERICREDIT FINANCIAL SERVICES,
INC.
12-17-13 [[28](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$15,000.00 of AmeriCredit Financial Services, Inc.'s claim secured by a 2006 Mercedes Benz 350R (the "Collateral") is a secured claim, and the balance of such claim is an unsecured claim.

In the absence of opposition, for the purposes of this motion, the Collateral had a value of \$15,000.00 on the date of the petition.

The court will issue a minute order.

40. [11-28661](#)-B-13 ROBERT RECH AND DIANE MOTION TO MODIFY PLAN
DBJ-3 EKLUND 11-8-13 [[95](#)]

Tentative Ruling: The trustee's objection is overruled. The motion is granted, and the modified plan filed November 8, 2013 (Dkt. 97) is confirmed with the following modification: Section 1.03 shall state that the monthly plan payments will continue for sixty (60) months.

The court notes that the modified plan reduces the total amount to be paid to general unsecured creditors from 27.44% to 0.00%, an amount less than that required by 11 U.S.C. section 1325(b)(1)(B). The court may not raise a section 1325(b) objection sua sponte. Andrews v. Loheit (In re Andrews), 155 B.R. 769, 771-772 (9th Cir. BAP 1993), aff'd, 49 F.3d 1404 (9th Cir. 1995). The court expresses no opinion whether the modified plan would be confirmed in the presence of an objection to this reduction in dividend by either the trustee or the holder of an allowed unsecured claim. See Hamilton v. Lanning, 560 U.S. 505, 130 S. Ct. 2464, 177 L.Ed.2d 23 (2010) (discussing evidence required to rebut the presumption of a debtor's projected disposable income established by Official Form 22C).

The court will issue a minute order.

41. [13-26764](#)-B-13 FLOYD/DAWN WEBB MOTION TO MODIFY PLAN
PGM-2 12-5-13 [[42](#)]

Tentative Ruling: The trustee's opposition is sustained. The motion to confirm the modified plan filed December 5, 2013 (Dkt. 46) is denied.

In addition to the trustee's opposition, the court notes that the debtors have not carried their burden of establishing all of the plan

confirmation requirements of 11 U.S.C. § 1325(a). Chinichian v. Campolongo, 784 F.2d 1440, 1443-1444, (9th Cir.1986) ("For a court to confirm a plan, each of the requirements of section 1325 must be present and the debtor has the burden of proving that each element has been met."). The court has an independent duty to confirm only plans that comply with the requirements of the Bankruptcy Code. See United Student Aid Funds, Inc. v. Espinosa, 559 U.S. 260, 278 (2010) ("Failure to comply with this [§§ 1328(a)(2) and 523(a)(8)] self-executing requirement should prevent confirmation of the plan even if the creditor fails to object, or to appear in the proceeding at all."); see also In re Dynamic Brokers, Inc., 293 B.R. 489, 499 (B.A.P. 9th Cir. 2003) (citing Everett v. Perez, 30 F.3d 1209, 1213 (9th Cir. 1994)).

Here, the debtors propose to increase their plan payment from \$2,100.00 to \$2,150.00. However, according to their most-recently filed Schedules I and J (Dkt. 1, p.31-33), the debtors have only \$2,100.00 in monthly net income which can be devoted to plan payments. The increase is modest compared to the original plan payment, but the debtors have defaulted on 2.7 prior plan payments, totaling approximately \$5,600.00. The debtors have failed to explain satisfactorily how they will be able to afford the proposed increase in plan payments. 11 U.S.C. § 1325(a)(6). As such, they have failed to carry their burden of establishing all plan confirmation requirements of 11 U.S.C. § 1325(a).

The court will issue a minute order.

42. [11-34366](#)-B-13 RAYMOND/CHERYL MEDEIROS MOTION TO MODIFY PLAN
BLG-3 12-3-13 [[54](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted, and the modified plan filed December 3, 2013 (Dkt. 53) is confirmed.

The court will issue a minute order.

43. [09-20267](#)-B-13 GACIANO/ANICETA CASIS MOTION FOR COMPENSATION FOR
PGM-5 PETER G. MACALUSO, DEBTORS'
ATTORNEY(S), FEES: \$2,120.00,
EXPENSES: \$0.00
12-17-13 [[156](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The application is approved for \$2,120.00 in fees and \$0.00 in costs for a total of \$2,120.00 to be paid by the trustee through the plan as an administrative expense to the extent that funds are available in the hands of the trustee to do so. Any excess may be collected directly from the debtors to the extent that such direct collection is permitted under 11 U.S.C. §§ 362 and 524. Except as so ordered, the application is denied.

On January 8, 2009, the debtors filed a chapter 13 petition (Dkt. 1). As part of confirmation of the debtors' first modified chapter 13 plan (Dkt. 138), the applicant consented to compensation in accordance with the Guidelines for Payment of Attorney's Fees in Chapter 13 Cases. This court authorized payment of fees and costs totaling \$2,500.00 through the plan. (Dkt. 145, p.1). The applicant now seeks additional compensation in the amount of \$2,120.00 in fees and \$0.00 in costs.

As set forth in the attorney's application, these fees and costs are reasonable compensation for actual, necessary and beneficial services. The court finds that the amount of work applicant has done in this case is sufficiently greater than a "typical" chapter 13 case so as to justify additional compensation under the Guidelines. In re Pedersen, 229 B.R. 445 (Bankr. E.D. Cal. 1999) (J. McManus).

The court will issue a minute order.

44. [11-25374](#)-B-13 YIA VUE MOTION TO APPROVE LOAN
DBJ-3 MODIFICATION
12-20-13 [[44](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The debtor's motion for authority to incur new debt is granted on the terms set forth in the Loan Modification Agreement submitted as Exhibit "A" to the motion (Dkt. 47, p.2).

The court will issue a minute order.

45. [13-34180](#)-B-13 WILLIAM/YVETTE MARTINEZ MOTION TO VALUE COLLATERAL OF
SJS-1 BANK OF AMERICA, N.A.
12-18-13 [[20](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$0.00 of Bank of America, N.A.'s claim secured by the second deed of trust on real property located at 1529 34th Avenue, Sacramento, CA 95822 (the "Property") is a secured claim, and the balance of its claim is an unsecured claim.

In the absence of opposition, for the purposes of this motion, the Property had a value of \$195,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Bank of America, N.A. with a balance of approximately \$207,105.00. Thus, the value of the collateral available to Bank of America, N.A. on its second deed of trust is \$0.00.

The court will issue a minute order.

46. [13-26082](#)-B-13 LINDA DIXON
SJJ-5

MOTION TO MODIFY PLAN
11-26-13 [[90](#)]

Tentative Ruling: The trustee's opposition is sustained. The motion to confirm the modified plan filed November 26, 2013 (Dkt. 93, p.2) is denied.

The court will issue a minute order.

47. [13-33383](#)-B-13 CHRISTIAN STEELE
VS-1

MOTION TO CONFIRM PLAN
12-10-13 [[32](#)]

Tentative Ruling: The trustee's objection that the plan does not provide for the secured claim of SunTrust Bank, including pre-petition arrears, is sustained. The trustee's objection regarding the debtor's lack of good faith under 11 U.S.C. § 1325(a)(3) is overruled without prejudice. The motion to confirm the plan filed November 13, 2013 (Dkt. 23) is denied.

Bad faith under 11 U.S.C. § 1325(a)(3) is determined based on an examination of the totality of the circumstances. Fidelity & Casualty Co. of New York v. Warren (In re Warren), 89 B.R. 87, 92 (9th Cir. BAP 1988) (citing Goeb v. Heid (In re Goeb), 675 F.2d 1386, 1389-90 (9th Cir.1982)). Here, the trustee has failed to cite or analyze the factors applicable to the bad faith analysis. The trustee's objection that the plan was not proposed in good faith is therefore overruled.

The debtor's reply to the trustee's opposition (Dkt. 57) is unpersuasive because it was not timely filed. Local Bankruptcy Rule 9014-1(f)(1)(C) requires the moving party to serve and file with the court a written reply to any written opposition at least seven (7) days prior to the date of the hearing. LBR 9014-1(f)(1)(C). Seven days prior to today's hearing was January 14, 2014. The debtor's written reply was not filed and served until January 16, 2014. In addition, the SunTrust Bank claim is allowed until someone prevails on an objection to the claim. 11 U.S.C. § 502(a). Further, a chapter 7 discharge only discharges a claim as a personal liability of the debtor. 11 U.S.C. § 524(a)(1) & (2). Any lien on collateral survives the chapter 7 discharge and such lien is sufficient to support a claim in a subsequent bankruptcy. Johnson v. Home State Bank, 501 U.S. 78, 111 S.Ct. 2150, 115 L.Ed.2d 66 (1991).

The court will issue a minute order.

48. [13-33383](#)-B-13 CHRISTIAN STEELE
VS-1

COUNTER MOTION TO DISMISS CASE
1-6-14 [[43](#)]

Tentative Ruling: The trustee's countermotion (Dkt. 43) is filed under LBR 9014-1(f)(1)(B). The court issues the following abbreviated tentative ruling.

The countermotion is conditionally denied, the conditions being that on or before February 4, 2014, the debtor files a new plan, a motion to confirm the new plan and all necessary related motions, including without limitation motions to value collateral and motions to avoid liens, properly serves the new plan and the motion(s), and sets the motion(s) for hearing on the next available chapter 13 calendar that provides proper notice for all of the motions to be heard on the same calendar.

The court will issue a minute order.

49. [13-32286](#)-B-13 MARCOS SMITH
WW-2

MOTION TO CONFIRM PLAN
12-23-13 [[30](#)]

Disposition Without Oral Argument: Oral argument will not aid the court in rendering a decision on this matter.

This matter is continued to February 18, 2014, at 9:32 a.m. Opposition is due by February 4, 2014. Replies, if any, are due by February 11, 2014.

For counsel's future reference, Local Bankruptcy Rule 9014-1(j) states that "continuances of hearings must be approved by the Court. A request for a continuance must be made orally at the scheduled hearing or in advance of it if made by written application. A written application shall disclose whether all other parties-in-interest oppose or support the request for a continuance." LBR 9014-1(j). Simply filing an amended notice of hearing (Dkt. 40) purporting to continue the matter is ineffective. A failure to comply with the Local Bankruptcy Rules constitutes grounds to deny the motion. LBR 1001-1(g). However, in this instance the court treats the amended notice of hearing as a request for a continuance and grants that request. Therefore, this matter is continued to February 18, 2014, at 9:32 a.m.

The court will issue a minute order.

50. [09-45987](#)-B-13 JEFFREY PERRY
KY-5

CONTINUED MOTION TO MODIFY PLAN
11-26-13 [[182](#)]

Tentative Ruling: This matter is continued from January 7, 2014, in order to allow the court an opportunity review a proof of service of the motion and notice of hearing that the debtor failed to previously attach. The court issues the following abbreviated tentative ruling.

The trustee's opposition (Dkt. 191) is overruled. The motion is granted, and the modified plan filed November 26, 2013 (Dkt. 188) is confirmed.

The trustee initially opposed this motion on the grounds that the debtor was delinquent in the amount of \$3,310.15, or approximately 0.89 plan payment. However, at the hearing on January 7, 2014, the trustee stated that the debtor was current on plan payments through December 2013. As such, the trustee's opposition is overruled.

The court has reviewed the proof of service filed January 6, 2014 (Dkt. 196) and finds it acceptable.

The court will issue a minute order.

51. [12-20293](#)-B-13 MARCUS/CHRISTINA SABALA MOTION TO VALUE COLLATERAL OF
CYB-2 THE BANK OF NEW YORK MELLON
12-20-13 [[57](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$0.00 of Bank of New York Mellon f.k.a. The Bank of New York, as successor trustee to JPMorgan Chase Bank, N.A., as trustee on behalf of the certificateholders of CWHEQ, Inc., CWHEQ Revolving Home Equity Loan Trust, Series 2006-E (the "Lienholder")'s claim secured by the second deed of trust on real property located at 7321 Peacock Way, Sacramento, CA 95820 (the "Property") is a secured claim, and the balance of its claim is an unsecured claim.

In the absence of opposition, for the purposes of this motion, the Property had a value of \$78,300.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Bank of New York Mellon with a balance of approximately \$156,488.51. Thus, the value of the collateral available to the Lienholder on its second deed of trust is \$0.00.

The court will issue a minute order.

52. [13-33793](#)-B-13 CHRIS/ADELE JOHNSON MOTION TO VALUE COLLATERAL OF
RWH-1 BANCO POPULAR NORTH AMERICA
12-12-13 [[18](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$0.00 of Banco Popular North America's claim secured by the second deed of trust on real property located at 3460 Nathan Court, Rocklin, CA 95677 (the "Property") is a secured claim, and the balance of its claim is an unsecured claim.

In the absence of opposition, for the purposes of this motion, the Property had a value of \$343,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Fay Servicing with a balance of approximately \$457,793.00. Thus, the value of the collateral available to Banco Popular North America on its second deed of trust is \$0.00.

The court will issue a minute order.

53. [13-33793](#)-B-13 CHRIS/ADELE JOHNSON
JPJ-1

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY JAN P.
JOHNSON AND/OR MOTION TO
DISMISS CASE
12-11-13 [[15](#)]

Tentative Ruling: The trustee's objection and motion to dismiss are governed by the procedures of LBR 9014-1(f)(2). Opposition may be presented at the hearing. Subject to such opposition, the court issues the following abbreviated tentative ruling.

The trustee's objection is overruled. The countermotion to dismiss is denied. The plan filed October 25, 2013 (Dkt. 5) will be confirmed.

The trustee's sole objection is that the plan's feasibility depends on the granting of a motion to value collateral for Banco Popular North America. The court heard that matter elsewhere on today's calendar and resolved it in a manner consistent with the plan's proposed treatment of the claim. As such, the trustee's objection is overruled.

The court will issue a minute order overruling the trustee's objection and denying the countermotion to dismiss. Counsel for the debtors shall submit an order confirming the plan using EDC form 3-081 (Rev. 5/1/12) that conforms to the court's ruling and which has been approved by the trustee. The title of the order shall include a specific reference to the filing date of the amended plan.

54. [12-40994](#)-B-13 MICHAEL LITTLE
DBJ-6

MOTION TO CONFIRM PLAN
11-27-13 [[205](#)]

Tentative Ruling: The trustee's objection regarding the plan's failure to provide treatment for the secured obligation of Allied Cash Advance ("Allied") is sustained. The trustee's remaining objections are overruled. Creditor Sterling Bank and Trust, FSB ("Sterling")'s objections are sustained. The motion to confirm the amended plan filed November 27, 2013 (Dkt. 209) is denied.

The trustee's first objection is overruled because the debtor and creditor Rush Funding, LLC ("Rush") entered into a stipulation (Dkt. 161), approved by order entered August 26, 2013 (Dkt. 162), whereby the parties agreed that Rush would be paid interest only on its secured claim in the monthly amount of \$366.67 with the principal balance due and payable on or before the completion of the fourth year of the plan. The plan's treatment of Rush's Class 1 claim is consistent with this stipulation.

The trustee's third objection regarding the plan taking longer than sixty months to complete is overruled because it appears that the over-extension is caused by the trustee including in his calculation (Dkt. 215) the arrears owed to Rush.

Regarding the trustee's second objection that the secured obligation of Allied is not provided for by the plan, the court first notes that the objection is based on the debtor's Schedule D, not a filed claim. The court also acknowledges the debtor's argument that the vehicle securing Allied's claim was totaled and that he may no longer be in possession of the vehicle. However, the debtor states in his reply brief that he has "submitted an amendment of the schedules to accurately reflect this" (Dkt. 219, p.2). The court sees no evidence of an amended schedule being filed on the docket or as an attachment to the debtor's reply. The debtor has provided no evidence or authority to establish that this is now an unsecured obligation.

Sterling's objections are sustained for the reasons set forth therein. The court finds unpersuasive the debtor's argument that the property securing Sterling's claim is not his principal residence. According to the debtor's voluntary petition filed December 5, 2012 (Dkt. 1, p.1), "703 W. 2nd Ave., Chico, CA 95925" is listed as the street address of the debtor. While the court recognizes that the debtor also lists this address for his place of employment on Schedule I (Dkt. 1, p.34), the fact that he listed it as his street address on his voluntary petition is the debtor's admission that 703 W. 2nd Ave., Chico, CA 95925 is his principal residence. The debtor has provided no evidence that his principal residence is elsewhere.

Additionally, the motion to confirm the amended plan is denied because the debtor has not carried his burden of establishing all of the plan confirmation requirements of 11 U.S.C. § 1325(a). Chinichian v. Campolongo, 784 F.2d 1440, 1443-1444, (9th Cir.1986) ("For a court to confirm a plan, each of the requirements of section 1325 must be present and the debtor has the burden of proving that each element has been met."). The court has an independent duty to confirm only plans that comply with the requirements of the Bankruptcy Code. See United Student Aid Funds, Inc. v. Espinosa, 559 U.S. 260, 278 (2010) ("Failure to comply with this [§§ 1328(a)(2) and 523(a)(8)] self-executing requirement should prevent confirmation of the plan even if the creditor fails to object, or to appear in the proceeding at all."); see also In re Dynamic Brokers, Inc., 293 B.R. 489, 499 (B.A.P. 9th Cir. 2003) (citing Everett v. Perez, 30 F.3d 1209, 1213 (9th Cir. 1994)). Here, the plan proposes balloon payments to Rush in year four and Sterling in year five through various refinancing. The debtor has failed to show that he will be able obtain refinancing or make the balloon payments when the time comes. Therefore, the debtor has not shown that the plan complies with 11 U.S.C. § 1325(a)(6). The debtor has not carried his burden of establishing all of the plan confirmation requirements of 11 U.S.C. § 1325(a).

The court will issue a minute order.

55. [12-40994](#)-B-13 MICHAEL LITTLE
DBJ-6

COUNTER MOTION TO DISMISS CASE
1-6-14 [[214](#)]

Tentative Ruling: The trustee's countermotion (Dkt. 214) is filed under LBR 9014-1(f)(1)(B). The court issues the following abbreviated tentative ruling.

The countermotion is conditionally denied, the conditions being that on

or before February 4, 2014, the debtor files a new plan, a motion to confirm the new plan and all necessary related motions, including without limitation motions to value collateral and motions to avoid liens, properly serves the new plan and the motion(s), and sets the motion(s) for hearing on the next available chapter 13 calendar that provides proper notice for all of the motions to be heard on the same calendar.

The court will issue a minute order.

56. [13-31095](#)-B-13 GEOFFREY GREITZER MOTION TO CONFIRM PLAN
DBJ-2 11-26-13 [[52](#)]

Tentative Ruling: This matter is continued to February 4, 2014, at 9:32 a.m.

57. [13-31095](#)-B-13 GEOFFREY GREITZER COUNTER MOTION TO DISMISS CASE
DBJ-2 12-26-13 [[58](#)]

Tentative Ruling: This matter is continued to February 4, 2014, at 9:32 a.m.

58. [11-20396](#)-B-13 EDWARD/VICTORIA HOTCHKISS MOTION TO MODIFY PLAN
JT-2 11-20-13 [[60](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted, and the modified plan filed November 20, 2013 (Dkt. 62) is confirmed.

The court will issue a minute order.

59. [11-20396](#)-B-13 EDWARD/VICTORIA HOTCHKISS MOTION TO VALUE COLLATERAL OF
JT-3 BANK OF AMERICA, N.A.
12-6-13 [[66](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$0.00 of Bank of America, N.A.'s claim secured by the second deed of trust on real property located at 1869 McCune Avenue, Yuba City, CA 95993 (the "Property") is a secured claim, and the balance of its claim is an unsecured claim.

In the absence of opposition, for the purposes of this motion, the Property had a value of \$201,500.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Nationstar Mortgage, LLC with a balance of approximately \$265,240.71. Thus, the value of the collateral available to Bank of America, N.A. on its second deed of trust is \$0.00.

The court will issue a minute order.

60. [11-24996](#)-B-13 RONALD/BETTY MARTINO MOTION TO VALUE COLLATERAL OF
JT-2 JPMORGAN CHASE BANK, N.A.
12-12-13 [[60](#)]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. \$0.00 of JPMorgan Chase Bank, N.A.'s claim secured by the second deed of trust on real property located at 930 Griffith Drive, Dixon, CA 95620 (the "Property") is a secured claim, and the balance of its claim is an unsecured claim.

In the absence of opposition, for the purposes of this motion, the Property had a value of \$344,000.00 on the date of the petition. The Property is encumbered by a first deed of trust held by Bank of America, N.A. with a balance of approximately \$396,505.04. Thus, the value of the collateral available to JPMorgan Chase Bank, N.A. on its second deed of trust is \$0.00.

The court will issue a minute order.

61. [13-33696](#)-B-13 MARIO CARRASCO OBJECTION TO DEBTOR'S CLAIM OF
JPJ-2 EXEMPTIONS
12-12-13 [[27](#)]

Disposition Without Oral Argument: Oral argument will not aid the court in rendering a decision on this matter.

The objection is removed from the calendar. The trustee withdrew the objection on January 9, 2014 (Dkt. 33).

62. [11-22057](#)-B-13 ROBERT MARSHALL AND OBJECTION TO DEBTORS' CLAIM OF
JPJ-1 MICHELLE OGDEN-MARSHALL EXEMPTIONS
12-4-13 [[46](#)]

Tentative Ruling: The trustee's objection is overruled without prejudice.

The objection is overruled without prejudice because the trustee has failed to meet his burden of proof that the exemptions the debtors have claimed in a personal injury recovery are not proper. It is well

accepted in the Ninth Circuit that an exemption claim is presumptively valid. Carter v. Anderson (In re Carter), 182 F.3d 1027, 1029-30, n. 3 (9th Cir.1999). Once the exemption has been claimed, "the objecting party has the burden of proving that the exemptions are not properly claimed." Fed. R. Bankr. P. 4003(c); Gonzalez v. Davis (In re Davis), 323 B.R. 732, 736 (9th Cir. B.A.P. 2005) (Klein, J., concurring). Even if the presumption is rebutted with evidence from the objecting party, forcing the debtor to come forward with unequivocal evidence to support the exemption, "[t]he burden of persuasion, however, always remains with the objecting party." In re Carter, 182 F.3d at 1029 n. 3.

Here, it is undisputed that the debtors filed a personal injury lawsuit in Sacramento County Superior Court, case no. 34-2009-00046261, on May 19, 2009 (Dkt. 53, p.6). As evidenced by the invoice attached to the debtors' response (Dkt. 53, p.11), the lawsuit was settled for a gross amount of \$20,000.00. The invoice does not, however, explain how the settlement was reached or what amount was allocated to each allegation set forth in the complaint. The trustee admits in his reply brief that "...the actual settlement documents are not in evidence. It is impossible to determine why the lawsuit settled or what portion of the settlement was for one issue over another without that information" (Dkt. 55, p.2). The trustee contends that "because the settlement disbursement statement does not assign specific amounts to particular elements of the complaint, the debtors have failed to establish that the entire amount was specifically for compensation for loss of future earnings under C.C.P. Section 703.140(b)(11)(E) or personal bodily injury not including pain and suffering and pecuniary loss under C.C.P. Section 703.140(b)(11)(D)" (Dkt. 55, p.2). What the trustee fails to realize is that the burden of establishing these facts is on him, not the debtors. The trustee has provided no evidence as to how the debtors' personal injury settlement was reached and, therefore, no evidence to rebut the presumptive validity of the debtors' claim of exemption. Absent such evidence, the court will not speculate as to how the settlement agreement was reached. "When called upon to allocate an award or settlement to exemptible and non-exemptible damages, courts should not resort to speculation." In re Whitson, 319 B.R. 614, 617 (Bankr. E.D. Ark. 2005). "One bankruptcy court has stated, '[t]he fact that we have been reduced to speculation necessarily mandates the conclusion that the [objector] has not met his burden.'" Id. (citing In re Cramer, 130 B.R. 193, 195 (Bankr.E.D.Pa.1991) (quoting In re Magnus, 84 B.R. 976, 979 (Bankr.E.D.Pa.1988))). As such, the trustee's objection is overruled without prejudice.

The court will issue a minute order.

63. [09-38199](#)-B-13 MARCIA RUDE
MOH-3

MOTION TO MODIFY PLAN
12-6-13 [[51](#)]

Tentative Ruling: The motion to confirm the modified plan filed December 6, 2013 (Dkt. 56) is denied.

Although no party in interest has opposed the motion, the court has an independent duty to confirm only plans that comply with the requirements of the Bankruptcy Code. See United Student Aid Funds, Inc. v. Espinosa,

559 U.S. 260, 278 (2010) ("Failure to comply with this [§§ 1328(a)(2) and 523(a)(8)] self-executing requirement should prevent confirmation of the plan even if the creditor fails to object, or to appear in the proceeding at all."); see also In re Dynamic Brokers, Inc., 293 B.R. 489, 499 (B.A.P. 9th Cir. 2003) (citing Everett v. Perez, 30 F.3d 1209, 1213 (9th Cir. 1994)). Here, the debtor seeks to increase her monthly payments from \$244.00 to \$439.00 in order to account for a claim that came in higher than anticipated. The increase is 80% of the prior plan payment. However, the debtor has failed to explain in either her motion or declaration how she will be able to afford the increased payment. 11 U.S.C. § 1325(a)(6). According to Schedule J (Dkt. 1, p.20), the debtor's monthly net income is only \$244.00. Therefore, the debtor has not carried her burden of establishing all of the plan confirmation requirements of 11 U.S.C. § 1325(a).

The court will issue a minute order.

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| 64. | <u>13-34699</u> -B-13 DESIREE SAMPLE
JPJ-1 | OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON
12-23-13 [<u>27</u>] |
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Tentative Ruling: The trustee's objection is governed by the procedures of LBR 9014-1(f)(2). Opposition may be presented at the hearing. Subject to such opposition, the court issues the following abbreviated tentative ruling.

The trustee's objection is sustained. Confirmation of the plan filed November 18, 2013 (Dkt. 6) is denied.

The court will issue a minute order.

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| 65. | <u>13-24922</u> -B-13 JAMES BATTLES, JR.
MRL-1 | MOTION TO SELL O.S.T.
1-15-14 [<u>33</u>] |
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Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(3)(motions set on shortened time). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.